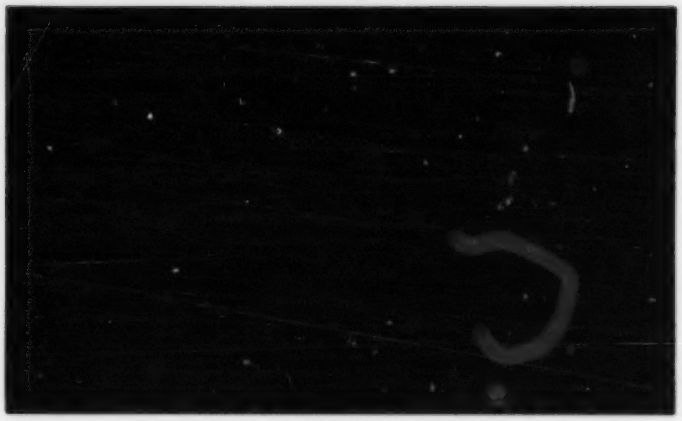
Nova Scotia
Advisory Council
on the Status of
Women

Conseil consultatif
sur la condition
féminine de la
Nouvelle-Écosse

An agency of the
Province of Nova Scotia



A JOINT SUBMISSION

TO THE

LEGISLATIVE COMMITTEE ON BILL C-43

AN ACT RESPRECTING ABORTION

PRESENTED BY THE

ATLANTIC CANADA PROVINCIAL ADVISORY COUNCILS

ON THE STATUS OF WOMEN

FEBRUARY 1990

Introduction

In January 1988, the Supreme Court of Canada struck down Canada's abortion law, ruling it unconstitutional because the therapeutic abortion committee process caused unnecessary delays and the whole process itself was a profound interference with a woman's right to freedom and security of person, as guaranteed by the Canadian Charter of Rights and Freedoms. The judgement also cited the inequity in the application of the therapeutic abortion committees and access to abortion services in general in Canada.

Since that historic judgement, the government has already tried to present resolutions for approval concerning the regulation of abortion in Canada. These resolutions failed for a lack of a majority vote in the House of Commons. The four Atlantic Councils believe that the substance of the proposed abortion legislation does not differ significantly from the 1969 law struck down in

January 1988. The new bill (C-43) now before the Parliamentary Committee was apparently proposed to fill the vacuum left by the 1988 decision, a vacuum which may have encouraged, in public perception at least, the Dodd and Daigle cases of July and August 1989, and which prompted widespread discussion on accessibility to abortion services in Canada.

The four Atlantic Advisory Councils on the Status of Women categorically reject the proposed legislation on the grounds that

1) it makes women, and their doctors (or other medical professionals) liable for criminal charges by regulating abortion services through the Criminal Code of Canada;

2) it fails to ensure equal access to abortions across the country; and

3) it does not regulate nationally the provision of abortion services in this country.

Any interference with a woman's decision to end her pregnancy, whether through legislation, committees, second doctor's approval, or other criteria (for example, through a very narrow definition of health), implies that someone may

stop or cause delays in the delivery of this medical procedure. In this way, the proposed bill definitely contradicts the spirit of the 1988 Supreme Court decision. To force a woman to go through a pregnancy against her will is a violation of her fundamental rights, her dignity and her freedom of conscience (Charter of Rights and Freedoms).

Re-criminalization of abortion

In the proposed legislation, abortion remains a criminal offence unless a woman's health is endangered, and it does nothing to ensure that all Canadian women have access to safe, affordable abortions if they so choose. The Atlantic Advisory Councils recommend that abortion be removed from the Criminal Code since it is a health matter, not a criminal one.

The decision concerning the termination of a pregnancy should be left to the individual woman in consultation with her doctor. The provisions for an abortion should be the same as for any other medical or surgical procedures, equal access to which is guaranteed through the Canada Health Act. Neither the woman nor her physician should be liable to criminal prosecution or punishment of any kind for seeking, obtaining or providing an abortion.

One prosecution, even if it is unsuccessful, will stop many doctors from performing needed abortions. The mere threat of having charges laid against them will discourage many from performing the procedure and will force others to adopt strict health criteria, causing more women to experience difficulty in getting abortions. Hospital boards exert pressure on their medical staff and the new Bill could be used to justify stricter conditions under which abortions will be allowed to be performed in hospitals.

The bill also invites abuse in the form of the "bogus" patient who provides false urine samples, schedules procedures and then creates unfavourable publicity, a tactic used by the anti-choice movement in the United States. In Newfoundland, for example, some doctors have stopped performing abortions because once they were publicly identified, they experienced much harassment from anti-choice demonstrators.

The bill puts the onus of the decision squarely on the doctors, not the women desiring the procedure. We may think that all medical decisions are made by doctors, but a patient has a right to treatment whether it is a broken bone or an unwanted pregnancy. Under this bill, it is the doctor who decides if the woman's health is in danger, and this can create a lot of uncertainty as to how unwell a woman has to

be in order to be admissible, thus causing stress both for her and for the doctor who has to make the decision.

"Various expert doctors testified at the trial (Morgentaler, Smoling and Scott v. Her Majesty the Queen and the Attorney General) that therapeutic abortion committees apply widely differing definitions of health" (Day and Persky, 52). Since therapeutic abortion committees were made up of individual doctors, there is no reason to suppose the ambiguousness of the term "health" will be any less problematic under the proposed legislation, and it still will not be "possible for women to know in advance what standard of health will be applied" (Day and Persky, 52).

Furthermore the bill implies that it is the doctor who knows better than the woman how an unwanted pregnancy would affect her well-being. We believe that the woman can best evaluate the impact that an unwanted pregnancy would have on her well-being, because only she knows and appreciates the conditions in which she is living. This belief is based on the knowledge that health, as the World Health organization defines it, is "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity." WHO also describes health as "the extent to which an individual or a group is able ... to realize aspirations or needs and ... to change or cope with the

environment. Health is therefore seen as a resource for everyday life, not the object of living."

No criminal law will stop abortions. Women make this very serious decision only after careful consideration, because they care about the quality of their lives, the lives of their families, as well as consideration for the quality of life they can offer a child. Motherhood is such an important responsibility that under no circumstances should it be imposed upon a woman.

Accessibility

In the 1988 Supreme Court ruling concerning section 251 of the Criminal Code, women's access to abortion services was an important consideration. If a woman experiences delays after making a decision to seek an abortion, or must travel outside of her area to find a doctor or a hospital where she can obtain this medical procedure, it increases the risk to the woman's physical and psychological health. Women, particularly young, poor, rural, or married women, may not be able to obtain therapeutic abortions "without great trauma, expense, and inconvenience" (Dickson, quoted in Day and Persky, 188).

In the Supreme Court decision, the majority of the justices found that section 251 of the Criminal Code

restricted "the number of hospitals in which abortions can be performed legally" (Day and Persky, 184). Indeed, "ensuring that fair and reasonable access to abortion is not denied" is purportedly one of the three "guiding principles" in the new legislation (New Abortion Legislation Background Information, 4).

To be sure, access to abortion is not explicitly **denied**, but neither is it **ensured**, and this serves to effectively limit abortion services. While the delays experienced by women seeking abortions may be lessened or eliminated **in some cases** by replacing the approval of the a hospital therapeutic abortion committee with the approval of **one** doctor, **in many cases**, women will be denied access completely if they cannot find a doctor willing to perform an abortion or a hospital that allows the procedure.

For obvious examples of restricted access, we can look to the refusal of Prince Edward Island hospital boards to allow any legal abortions to be performed there or to that provincial government's refusal to fund any abortions performed outside Prince Edward Island; the attempts by the government of Nova Scotia to limit access by preventing the opening of a free-standing abortion clinic; and the recent decision by a British Columbia hospital to ban abortions despite the opposition of an overwhelming majority of the

medical staff (87 per cent) to say nothing of the numerous other Canadian regional and tertiary care hospitals which have the necessary facilities but refuse to allow abortions even in cases of rape or incest.

As a result, hospitals that formerly limited or disallowed abortion by having no therapeutic abortion committee to approve abortions, or by having an abortion quota, can now merely refuse permission for doctors seeking to perform abortions, either by revoking or threatening to revoke hospital privileges, or by enacting policies to refuse abortions altogether.

Bill C-43 simply does not address the problem of access to abortion. Access would have been addressed had the federal government recognized abortion as an essential health service within the Canada Health Act.

To have ready access to abortion, a woman must first know that such a service exists, and where it is available. Then she must have the means to get there and she must observe the legal conditions under which the medical procedure is to be performed. As the following accounts indicate, abortion services for women in the Atlantic provinces are neither accessible nor affordable.

NEW BRUNSWICK

In New Brunswick, an abortion must be "medically required" as defined by two physicians (chosen by the woman) and performed in an accredited hospital by a specialist in obstetrics or gynaecology. There are 33 such specialists and four hospitals in New Brunswick performing abortions: Saint John Regional; Dr. Chalmers, Fredericton; Moncton City; and Oromocto Public. The four hospitals are all in the southern part of the province and they only take patients from their own health region. As a result, women from other regions must usually go to another province (often Quebec) or state (usually Maine).

A woman who does not live in Southern New Brunswick or who cannot find two doctors to approve her request for an abortion simply does not have access to the procedure. A woman living in Edmundston (northwest), Campbellton (north central) or Newcastle (northeast), simply has no choice but to leave, not only her community, but her province.

Furthermore, travelling expenses are never reimbursed, and payment of the medical procedure is only ever covered by Medicare New Brunswick when the rule of two doctors and one specialist in a hospital is followed. The average wage for New Brunswick women is a little over $10,000 per year, but in northern New Brunswick, there are fewer women in the

labour force with lower salaries than those women in the southern part of the province. Many women simply cannot afford to travel outside the province to get an abortion, which can cost as much as $1000 including travel, accommodation and the costs of the procedure itself.

In 1988-89, there were 427 abortions in New Brunswick, all performed in the southern region. There are only 68 known abortions performed on women outside New Brunswick on New Brunswick residents. Of the 68 women who requested reimbursement from Medicare, only 8 were accepted and reimbursed a maximum of $120. Women in isolated regions, especially poor women, have no choice but to go through with unwanted pregnancies.

NEWFOUNDLAND

According to the provincial department of health, all provincial hospitals have the capability to provide therapeutic abortions. Although those outside of St. John's only perform them occasionally, currently there is only one hospital in the province regularly performing abortions, and that is the General Hospital in St. John's, the largest urban centre in the province. In 1988, 434 abortions were performed in Newfoundland, 369 of them at the General Hospital.

Health department officials were unable to release the names of the other hospitals performing abortions without first obtaining the permission of the hospitals concerned. Hospitals which have been known to perform abortions in the past include the ones in Corner Brook, St. Anthony, Carbonear, Baie Verte and a second one in St. John's, the Grace General Hospital.

The reality is that accessibility to abortion services in Newfoundland and Labrador is severely limited. Many women are forced to gather together meagre resources to fly to Halifax or Montreal to obtain an abortion in another hospital, or most frequently, in a free-standing abortion clinic. The provincial government health care plan, MCP, will only pay for abortions performed under "proper medical conditions" in accredited Canadian (including Newfoundland) hospitals, but they will not cover travel expenses incurred in obtaining an abortion outside Newfoundland, and nor will they pay for abortions performed in free-standing clinics.

The process of obtaining a safe, legal abortion is physically stressful and emotionally debilitating as one woman recently revealed in a news story published in the St. John's Sunday Express (Nov. 5, 1989). Although the young woman was ten weeks pregnant, medical policy dates a pregnancy from the first day of the last period, and

therefore she was considered to be 12 weeks pregnant. The General Hospital will not perform any abortions after 12 weeks, forcing this young woman to consider more desperate measures such as making inquiries for the services of a backstreet abortionist.

She was lucky enough to be one of the last women to have an abortion at Dr. Morgentaler's clinic in Halifax before the facility was closed down by the Nova Scotian government. She paid for her airfare and her abortion by using a credit card and money reserved for other bills, but other women outside St. John's face additional costs in transportation, and many women generally are unwilling or unable to use a credit card to pay for abortion services.

There is no way of calculating the number of women who are forced to leave the province for an abortion, since the provincial health care plan will not release statistics on the numbers of patients requesting reimbursements for abortions performed in out-of province hospitals, and because there is no longer a statistical mechanism in place to calculate the numbers of abortions performed in other provinces (either in hospitals or in clinics) on women from Newfoundland and Labrador. The lack of accurate statistics on this health procedure is appalling and further clouds the

issue of accessibility and provincial responsibility for the provision of health care.

NOVA SCOTIA

While ten hospitals have the necessary facilities and resources to perform abortions, only eight of these institutions have performed any abortions in recent years. In 1988, 84 per cent of the 1,764 abortions performed in the province took place at the Victoria General Hospital in Halifax and seven per cent were performed at the Sydney City Hospital in Cape Breton; the remaining nine per cent were performed in only six regional hospitals. Two of these hospitals, Fisherman's Memorial in Lunenburg and Queen's General in Liverpool, allowed only five and eight abortions respectively.

Unfortunately, there is no way of determining the number of Nova Scotian women who are denied abortions by individual doctors or by hospital board policies, or the number of women who travel outside the province to clinics in other provinces or the United State. It is very clear, even without these statistics, that access to this medical procedure is a serious issue for Nova Scotian women since in much of the province, access to abortion is at best difficult, at worst simply unobtainable.

In an effort to prevent the establishment of a free-standing abortion clinic in Nova Scotia, the provincial government enacted legislation in the form of the Medical Services Act in March 1989. The provincial chapter of the Canadian Abortion Rights Action League was denied the right to challenge this legislation by the Nova Scotia Supreme Court and this group has subsequently launched an appeal. Dr. Henry Morgentaler has since been charged with 13 counts of violating the Act and his trial will begin in March. Since the proposed legislation would include abortion in the Criminal Code and would not specifically ensure or prohibit the operation of free-standing clinics, Bill C-43 will not in any way affect the outcome of the provincial Medical Services Act legislation. Under this proposed Criminal Code legislation, the provinces will still have the legal means to limit women's access to abortion services.

PRINCE EDWARD ISLAND

The present situation in PEI is intolerable since women on the Island do not have any access whatsoever to abortion services, regardless of the circumstances for which a woman wants one. Prince Edward Island's two major hospitals refuse to provide the service, and have followed this policy since 1982 (in the case of the Queen Elizabeth Hospital and since 1986 (in the case of the Prince County Hospital).

In effect, the last abortion performed in PEI appears to have been in 1980. For the last ten years, an estimated 400 women per year must travel hundreds of miles and leave their own communities to obtain an abortion.

It must be understood that having to obtain an abortion in another province, or in the United States, carries with it consequences beyond those usually experienced by women in need of, and able to access the procedure within their home provinces.

For example, a PEI woman finds herself pregnant, and decides that the circumstances of her situation make it impossible to bear a child. She becomes aware very quickly that this procedure is not available to her in PEI, and that information about options outside the province is not easily obtained. Often, her family doctor is unsympathetic and condemning, a response which adds to her stress, and delays further enquiries.

If she is able to learn about an abortion information service and then arrange to have an abortion (outside the province in either Halifax, Montreal, Toronto, Boston, or Bar Harbour for example), this woman discovers that only in exceptional circumstances is she able to receive financial assistance from the provincial government.

These "circumstances" require a three-member committee to decide whether her life or health is at risk (this definition does not take into account social factors); a physician who will take the time to submit the documentation necessary to determine her eligibility; and an available accredited hospital where the abortion must be performed according to the government policy.

The woman must also come to terms with the fact that she must leave PEI, an action which will tear her away from the support network that may exist for her at home. She may also have to arrange for leave from work; arrange for child care for her children; make expensive travel arrangements; and reserve out-of-province accommodation. For women who may not be familiar with their destination, the anxiety of travel to and within an unfamiliar city can be truly intimidating. Perhaps the most difficult part for many women is finding a way to explain a three-day absence from the province to family, friends and co-workers.

In no other province is it so evident that women's reproductive lives are controlled. In Canada we have the illusion that we have one of the best universal health care systems in the world, yet such a claim must be considered blatantly erroneous and gravely misleading in the face of such circumstances. With knowledge, information and

support, women can and do make informed ethical decisions. We feel that the right to make these decisions should rest as equally with Island women as with other Canadian women.

Regulation on a national basis

Contrary to assertions in the New Abortion Legislation Background Information, the proposed law does not "regulate abortion on a national basis." Bill C-43 "gives the provinces the option of compliance and (does) not provide the necessary foundation for a national regulatory scheme," an argument offered against the use of the Canada Health Act to ensure access.

Provincial medical insurance coverage for abortions must be guaranteed. The federal government must use its power under the Canada Health Act to withhold provincial health care insurance plan contributions if provinces do not meet criteria for accessibility, comprehensiveness and universality of abortion services. Ensured access to abortion must be made a provincial responsibility.

When British Columbia premier Bill Vander Zalm attempted to withhold abortion services unless a woman's life was threatened by the pregnancy, the British Columbia Supreme Court ruled that "such a determination, that abortion services are not medically required, purports to

remove services that are in fact medically required from the definition of insured service" (Judge McEachern, quoted in Day and Persky, 21). Abortion is a medical service and as such must not be restricted.

Conclusion

Since the earliest possible attention is medically indicated for abortion, many women in Atlantic Canada are faced with serious obstacles that result in unconscionable delays leading to increased stress and anxiety, as well as the more serious medical risks that are associated with later-stage abortions.

Access to abortion is being increasingly limited to the few who can afford it. At the same time, motherhood is becoming a more financially difficult responsibility to assume, as evidenced by the absence of a national child care strategy, recent cuts to unemployment insurance and the proposed implementation of a general sales tax which will hit low income individuals (many of whom are single mothers) the hardest.

Add to this the fact that one woman in eight is assaulted by her partner, that one girl in four is sexually assaulted before the age of 17, that women with mental and physical health problems are more vulnerable to sexual

abuse, that 20 per cent of victims of rape and incest become pregnant as a result of the unwanted sexual activity, that contraceptives fail, that two-thirds of single mothers live below the poverty line, that unequal division of family responsibilities creates stress, and that increasing numbers of mothers and children depend on soup kitchens and food banks to meet their basic nutritional requirements. It is clear that motherhood today is not an easy choice.

We are not trying to promote abortion, but we strongly resist any policy, program, or law that would force a woman to bear a child against her will. Making it more difficult for women to get abortions is no solution to the "problem." Education, support services and changes in the economic and social acceptance of women and their children are necessities that will help reduce the need for abortion services. Even in a world of perfect contraception, universal childcare and adequate minimum incomes, we still reserve the right to abortion as a choice among others.

Just as the need for crisis intervention in cases of violence against women does not replace the need for prevention, the solution to the problem of unwanted pregnancies is not only access to abortion, but better education, better contraceptives, more access to quality

child care and better living conditions for women who have children.

Many potential mothers in Atlantic Canada face poverty, and mental, physical, sexual, economic and legal abuse. Reproductive freedom is essential if women are to gain political, social and economic power in Canadian society. The right to participate in this society and to develop one's potential should not conflict with motherhood.

All laws, policies and practices that affect women's reproductive health, from the onset of menses to the cessation of menopause, must be woman-centred. The on-going practice of dividing women's reproductive capability into separate elements of birth control, abortion, pre-natal care, disease and treatment, without an overall woman-centred philosophy is to overlook, undervalue and control women's reproductive lives.

A majority of physicians (see CMA resolutions) and a majority of Canadians (see CARAL/GALLUP National Omnibus abortion poll and CIBC/Telepoll Research public opinion poll on abortion) believe that abortion is a personal decision that should rest with a woman, or with a woman and her doctor or advocate. The federal government has an

obligation to ensure that the wishes of the people of Canada are upheld.

With this principle in mind, the four Atlantic Advisory Councils recommend:

1) that abortion be removed from the Criminal Code of Canada. Abortion is health matter and decisions concerning the termination of a pregnancy should be left to individual women in consultation with their doctors.

2) that provincial medical insurance coverage for abortions be guaranteed. The federal government must use its power under the Canada Health Act to withhold provincial health care insurance plan contributions if provinces do not meet criteria for accessibility, comprehensiveness and universality of abortion services.

3) that the federal government increase funding so that counselling, family planning and public education programs may be expanded and made available to all Canadian women and men in an effort to reduce unwanted pregnancies, thus reducing the need for abortion services.

References

Day, Shelagh and Stan Persky. Editors. The Supreme Court of Canada Decision on Abortion. Vancouver: New Star Books, 1988.